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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/020,797	12/12/2001	Steve Mercereau	02700-0700 (42511-259288)	9520
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23370 7590 01/09/2003

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EXAMINER

PHILOGENE, PEDRO

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 01/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,797

Applicant(s)

MERCEREAU ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 20-26 is/are allowed.
- 6) ☒ Claim(s) 14-19 and 27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 02. 6) ☐ Other:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, line 2, the term "said actuator" lacks prior antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 14-16, 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates et al (6,174,318).

With respect to claims 14-16, 19, Bates et al disclose a medical retrieval device (FIG. 2, 15) comprising a handle (12) a hollow sheath (14) extending forward from the handle, the sheath having a forward end (20) a slide (26) attached to the handle for longitudinal movement with respect thereto along a path between rearward location and forward location; and, a basket (10) located at a forward end of the sheath, the basket

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having at least three legs (30,32,34) two of the legs (30,32) comprising a continuous loop lying in a plane, the ends of the loop being operatively connected to the slide, and a third leg (34) having a forward end joined to the continuous loop at an intermediate location thereon and a rearward end being operatively connected to the slide, all of the legs of the basket are located on one side of the plane defined by the continuous loop; as best seen in FIGS 2-5; and as set forth in column 5, lines 7-67 and column 6, lines 1-67.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates et al (6,174,318).

With respect to claims 17,18, it is noted that Bates et al. did not teach of a two different cross-sections —round and flat-- for the legs; as claimed by applicant. However, applicant failed to establish the criticality of such cross sections; and, the examiner believes that any cross-sections could have been used since the device would have performed equally as well with any given configurations.

Claims 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydell (5,163,942) in view of Bates et al (6,174,318).

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With respect to claim 27, Rydell discloses a medical retrieval device (110) comprising a handle (112) a slide (132) attached to the handle for longitudinal movement with respect thereto along a path between a rearward location and a forward location; as best seen in Fig.2. means (146) movably mounted to the slide and operatively associated with at least one of the basket legs for affecting translational movement of the at least one of the basket legs with respect to the slide.

It is noted that Rydell did not teach of a basket having three legs as claimed by applicant. However, in similar art, Bates et al evidence the use of a basket with at least three legs to allow material to be captured more readily and easily.

Therefore, given the teaching of Bates et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the basket of Rydell with the basket of Bates et al to allow material to be captured more readily and easily.

With respect to claims 29-31, the above combination of references teaches all the limitations as set forth.

Allowable Subject Matter

Claims 1-13,20-26 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,817,104	10-1998	Bilitz et al.
5,064,428	11-1991	Cope et al.

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5,989,266	11-1999	Foster
3,791,387	2-1974	Itoh
6,494,885	12-2002	Dhindsa

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 305-3591 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Pedro Philogene
January 8, 2003


PEDRO PHILOGENE
PRIMARY EXAMINER